

# Three Virtuous Things — the Charter the University and the Law School

## Murdoch University Law School

Chief Justice Robert French AC  
15 September 2015, Murdoch

Professor Bröhmer, Vice Chancellor, ladies and gentlemen: This evening we mention three anniversaries. In order of antiquity, they are the 800<sup>th</sup> anniversary of Magna Carta, the 40<sup>th</sup> of the founding of Murdoch University and the 25<sup>th</sup> of the commencement of the Murdoch University Law School.

Unlike Murdoch University and its Law School, Magna Carta did not start well. In a history first published in 1965 and revised and republished in 1992 and 2015, Sir James Holt, Emeritus Professor of History at Cambridge University, began his text with these harsh words:

In 1215 Magna Carta was a failure. It was intended as a peace and it provoked war. It pretended to state customary law and it promoted disagreement and contention. It was legally valid for no more than three months, and even within that period its terms were never properly executed.<sup>1</sup>

Despite that unpromising beginning the Charter was reissued in 1216, 1217 and 1225 and stands today as a kind of constitutional creation myth. Clause 29, numbered clause 39 in the original, still stands:

No Freeman shall be taken, or imprisoned, or disseised or outlawed or exiled, or in any way ruined, nor will we go or send against him, except by the lawful judgment of his Peers or by the Law of the Land.

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<sup>1</sup> J C Holt, *Magna Carta* (Cambridge University Press, 3<sup>rd</sup> ed, 2015) 33.

And coupled with that, clause 40: 'To no one will we sell, to no one will we deny or delay right or justice.' There was also the promise of a legally educated judiciary:

We will not make justices, constables, sheriffs or bailiffs who do not know the law of the land and mean to observe it well.

The promises made by King John, which he resiled from within a matter of weeks, were the progenitors of what we understand today as the rule of law, although that term seems to have made its first public appearance as the title to Pt II of Professors Dicey's treatise — *Introduction to the Study of the Law and the Constitution*. A contemporary understanding enunciated in the 11<sup>th</sup> edition of Wade and Forsyth's text on administrative law is 'that everything must be done according to law', which is to say:

Every act of governmental power, ie every act which affects the legal rights, duties or liabilities of any person, must be shown to have a strictly legal pedigree.<sup>2</sup>

The transmission of the Magna Carta and the development of the rule of law idea, as with the transmission and development of many ideas fundamental to our history and culture, has been and continues to be effected through a diversity of formal, institutional and informal pathways. An important mechanism of that transmission and development is the university which collects, retains, and expands upon our historical, cultural, scientific and legal heritage. Murdoch University in the 40<sup>th</sup> year since its commencement can claim a proud part in that centuries-long tradition.

The University takes its name from Sir Walter Murdoch, a distinguished academic and public essayist and educator who served as founding Professor of English at the University of Western Australia from 1913 until 1939 and as its Chancellor from 1943 to 1948. He died on 30 July 1970. In the month of his death, he had received a message that

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<sup>2</sup> HWR Wade and C Forsyth, *Administrative Law* (Oxford University Press, 11<sup>th</sup> ed, 2014) 15.

the Premier of the State proposed to name the second university in Western Australia after him. He accepted, but is said to have remarked 'it had better be a good one'. Many people in Western Australia still remember him as a communicator to the general public of large ideas through his bi-monthly columns in the *Sunday Times* newspaper.

The University was formally established by s 4 of the *Murdoch University Act 1973* (WA) (the Act). It is a body corporate. According to s 8 of its Act, it consists of its Senate, members of the academic staff and other staff of the university prescribed by Statute, Convocation, the students and such other persons as are prescribed by Statute.<sup>3</sup> That is a very old formula. It dates back at least as far as s 1 of the *Oxford and Cambridge Act 1571* which provided that 'the Chancellors, Masters and Scholars of Oxford and Cambridge Universities shall be incorporated and have perpetual succession ...'.<sup>4</sup> It is a formula which recognises staff and students as members of the university community and not just as employees and customers. That recognition is not merely symbolic. It has its roots deep in the history of universities. Indeed, it has a certain legal significance as the Federal Court of Australia recognised in 2008 in a case about the nature of the relationship between a university and its academic staff in the particular setting of the entitlement to intellectual property rights derived from research.<sup>5</sup>

The concept of the university as a community of scholars can be traced back through the etymology of the word 'university' coming out of the Latin collocation *universitas magistrorum et scholarium* - a community of masters and scholars. It was reflected in Cardinal Newman's famous essay on the idea of the university as 'a place in which inquiry is pushed forward and discoveries verified and perfected, and rashness is rendered innocuous and error exposed by collision of mind with mind and knowledge with knowledge'.<sup>6</sup>

The university today has a broader mission than its historical ancestors. It is not simply a vehicle for the advancement of society's social, economic and intellectual elites. It has a more democratic mission. That democratic dimension has drawn the university into public regulatory frameworks, established by State and Commonwealth governments and

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<sup>3</sup> *Murdoch University Act 1973* (WA), s 8.

<sup>4</sup> *Oxford and Cambridge Act 1571* (UK) 13 Eliz 1, s 1.

<sup>5</sup> *University of Western Australia v Gray (No 20)* (2008) 246 ALR 603; *University of Western Australia v Gray* (2009) 179 FCR 346.

<sup>6</sup> JH Newman, 'The Idea of a University' in *Essays English and America* (Collier & Sons, 1910) Vol 28, 31, 39.

linked closely to provision of public funding. It is increasingly being required to pay its own way — to attract fee paying students at all levels, to harvest its alumni for funding and other support and to undertake collaborative arrangements, including commercial arrangements, with public and private bodies.

There are tensions between the necessary responses of the university to contemporary pressures on resources and demands for narrowly focussed relevance and the idea of the university that many people still value — not just as a place for acquiring an employment qualification but a place in which the mind is opened to the possibilities of critical inquiry, research, scholarship and the service of wider society. The ongoing challenge is to maintain the enduring or core values which mark the university as a distinctive institution, one which cannot neatly be categorised as a commercial corporation in a market place for the provision of educational services. It is no anachronistic nostalgia for the experience which I enjoyed as a student in the 1960s which informs that sentiment. The distinctive character of the university is what appeals to the best minds and can play a part in realising the potential of all who are part of it.

In this its 40<sup>th</sup> year, Murdoch University is a distinctive institution of considerable importance to the State of Western Australia and to the national higher education landscape. It has some 22,000 enrolled students, including 2,000 students coming from 100 different countries. There are nine schools. It is located over three campuses, the main campus here at South Street and two others at Rockingham and the Peel area. It has a campus in Dubai.

This evening's celebration however, is focussed on the Law School which was established in 1990. Its establishment was the result of a most impressive campaign supported by some powerful proponents and led by Sir Ronald Wilson, a great Western Australian. He was Western Australia's first appointment to the High Court of Australia and later President of the Human Rights and Equal Opportunity Commission as well as Chancellor of this University. He and other supporters of the proposed Law School organised a formidable fundraising campaign in 1989 and 1990. Its success reflected the considerable support for the establishment of a second Law School within the legal profession.

A law school in a university is not some kind of vocational training department which stands alone. The concept of what a law school is, and can be, is linked to the idea of what a

university is, and can be. It must be connected to the historically rooted notion of a university as a community of scholars. Returning for a moment to Cardinal Newman in one of his Discourses 'Knowledge viewed in relation to professional skill', he observed that professional or scientific knowledge is not the sufficient end of a university education. He said of the professor of law or medicine or geology or political economy:

Out of a university he is in danger of being absorbed and narrowed by his pursuit and of giving lectures which are the lectures of nothing more than a lawyer, physician, geologist or political economist; whereas in a university he will just know where he and his science stand, he has come to it, as it were from a height, he has taken a survey of all knowledge, he is kept from extravagance by the very rivalry of other studies, he has gained from them a special illumination and largeness of mind and freedom and self-possession and he treats his own in consequence with a philosophy and a resource which belongs not to the study itself, but to his liberal education.<sup>7</sup>

The language is aspirational and gendered but can readily be generalised to inform an aspiration for both the staff and the students of the Law School.

There has been an enormous volume of literature on university education generally and legal education specifically in the more than 150 years since Cardinal Newman penned his essay. We would all agree, no doubt, that people who graduate from law schools and this Law School in particular, need to know how to read, to understand and to apply the law, whether it be the law of the Constitution, the law found in statutes, regulations, by-laws, and rules created by parliaments and executive governments, or the judge-made doctrines of the common law and equity. Law graduates, however, need to know more than how to read the rules and apply them. They need some sense of their historical, institutional and social context. And they should have a sense of the purpose for which they wish to use the knowledge and skills which they have acquired — I do not mean by that the hopelessly overused word 'passion'. Purpose in the sense I have used it is informed by some normative element. Harold Koh, the former Dean of Yale Law School, once described law schools as

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<sup>7</sup> John Newman, *The Idea of a University: Defined and Illustrated* (Longmans, Green & Co, 1907) 166–67.

'institutions of moral purpose' asserting that they must speak up for the rule of law when it is threatened because if they do not, nobody else will.<sup>8</sup>

It is interesting to look back as we do this day to the beginnings of an institution like a university or a law school. Their beginnings tell us that great things can be constructed from big ideas — the idea of a university — the idea of a law school. The challenge is to keep them large — not to be compressed under the pressures of economic viability and short-term market demands.

The ideas that informed the founding of the Murdoch University Law School were ideas about the need for it, how it could be established, what it could do and how it would take its place in the larger institution and ultimately in the rapidly developing phenomenon of a national legal profession finding its place in a global legal services environment. The first conceptions of how the Law School would work were formulated by its founding Dean, Professor Ralph Simmonds, and the initial academic staff who were prepared to take the risk and undertake the adventure of creating a law school out of nothing.

Ralph Simmonds was Foundation Dean of the Law School, appointed in 1992 and served until 1995 when he was succeeded by Professor Michael Blakeney. He was reappointed in 1997 and continued as Dean until 2003 when he was succeeded by Dr Chris Kendall. Professor Gabriëlle Moens succeeded Dr Kendall in 2005. Today, Professor Jürgen Bröhmer, formerly Dean of the University of New England at Armidale, serves as Dean of the Law School.

Under the Deans and their academic colleagues, the idea of the Law School has remained large. The contemporary vision of Murdoch Law School embraces the essentials of excellence in under-graduate and post-graduate programs, but places a particular emphasis on the international dimensions of Australian legal education. Under Professor Moens, Murdoch Law School described itself as a 'Global Law School'. The School aspired to provide students with a transnational legal education. In that emphasis it was forward looking. In 2012, the Australian Government Office of Learning and Teaching set up a project on internationalising the Australian law curriculum. Its purpose was to develop and model the effective integration of international and intercultural dimensions into legal education to

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<sup>8</sup> H Koh on 'Law and Globalisation' (Speech to the American Law Institute, Washington DC, 17 March 2006) quoted in Michael Coper 'Legal Knowledge, the Responsibility of Lawyers, and the Task of Law Schools' (2008) 39 *University of Toledo Law Review* 251, 260.

equip Australian legal graduates with the necessary international and intercultural competencies to work in a global legal context. The report which was published as a result of the project, takes its place as a resource of considerable importance to legal educators throughout Australia.

It may, of course, be said that not all law graduates are going to become high flying providers of global legal services. That is not the point. There are very few areas of domestic law today which do not in some way intersect with international law and the laws of other countries. Many subject areas have in one way or another, an inescapable international dimension. They include competition law, intellectual law, environment law, human rights law, criminal law, family law and taxation law. A prominent example in Australia is in the field of administrative law and particularly judicial review relating to asylum seekers. Any law faculty which aspires to provide legal education to international students has a very practical reason for ensuring that it engages with the global dimension. The law school does that.

The global dimension of law in Australia is also reflected in the interactions between the Australian legal profession and judiciary and the legal profession and judiciaries of our region and beyond. By way of example, next week, with two other Justices of the High Court, I will participate in Hong Kong in a Colloquium with the Chief Justice and Justices of the Hong Kong Court of Final Appeal, the Supreme Court of New Zealand and the Supreme Court of Canada on areas of law of common interest to us all. Later in the year I will participate in an Asian Competition Forum in Hong Kong concerned with competition laws relatively recently established in countries in our region. And at the end of January, the Chief Justice of Singapore is convening an international conference on Legal Convergence in an Asian Century. I will speak at that conference along with the Chief Justice and the Finance Minister of India. That conference will see the launch of the Asian Business Law Institute, which will involve Singapore, India, China and Australia and will initiate and facilitate research with a view to providing authoritative texts promoting convergence of business laws in the region.

As the newly appointed Prime Minister has remarked, this is an exciting time for Australia in terms of the challenges and opportunities presented by the rapidly changing regional and global environment. Murdoch Law School has demonstrated, in the 25 years of

its existence, that it is more than capable of providing a quality legal education to those who pass through its doors and of recognising the significance of the global dimension of that legal education, as well as the scholarship and research that are central to the intellectual life of any law faculty which is part of a university.

I congratulate the Law School on its 25<sup>th</sup> year and look forward to its continuing development and pursuit of excellence.